

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4266 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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GANGABEN CHHOTU GHOSH

Versus

DISTRICT MAGISTRATE

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Appearance:

MR NM KAPADIA for Petitioner

Mr. Nigam Shukla, learned Asst.G.P. for the respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 02/11/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the detention of petitioner's husband whereby the detenu was detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act') by order dated 27-4-96. The detention order was executed on 27-4-96 itself and since then the detenu is under detention

lodged at District Prison, Bhavnagar.

2. This Special Civil Application was filed in this Court on 21-6-96 and on 27-6-96 rule returnable on 30-7-96 was issued by this Court. So far neither any reply has been filed by the respondents nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that 6 criminal cases were registered against the detenu at Police Station, Bharuch City 'B' Division under the Bombay Prohibition Act; out of which 3 cases are pending trial before the Court and in 3 cases, the police investigation was going on at the time when the detention order was passed. The detaining authority has noted the allegations with regard to the aforesaid criminal cases registered against the detenu and has also taken into consideration the statements made by 4 witnesses against the detenu, who have stated about his criminal and anti social activities. The detenu has been using deadly weapons like Rampuri knife and has been threatening the witnesses and has been giving them public beating causing injuries, has been beating innocent persons and has also been manufacturing country liquor. The detaining authority has found that the detenu is a bootlegger and was engaged in all sorts of anti social activities and innocent persons were victims. The detaining authority has also invoked the provisions of S.9(2) of the Act so as to keep the identity of the witnesses to be secret for reasons of their security. The detaining authority has found that in the facts and circumstances of this case, there is no alternative except to detain the detenu so as to prevent him from continuing with his anti social activities. Accordingly the detention order was passed.

4. The detention order has been challenged on number of grounds, but the learned counsel for the petitioner has laid stress on the argument that even if all the allegations and materials relied upon by the detaining authority against the detenu are taken to be true, it does not constitute a case of breach of public order. At the most it can be said to be a case of breach of law and order.

5. In view of the reasons given in the judgment dated 4-10-96 in Special Civil Application No.3879/96 I am inclined to hold that in the facts of this case, the detention order has been passed for reasons, which can not be said to be germane to the breach of public order and at the most it is a case of breach of law and order. The detention order, therefore, can not be sustained in

the eye of law.

6. Accordingly the Special Civil Application is allowed. The impugned detention order dated 27-4-96 passed by the District Magistrate, Bharuch is hereby quashed and set aside and the detenu's detention is declared to be illegal and the respondents are directed to release the detenu and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

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